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*Bacon's Appeal*, 57 Pa. St. 504. In the present case, there was no strict executory trust. But since the particular estate was legal and the remainder unexecuted and equitable, the court rightly held that the rule in *Shelley's Case* was inapplicable.

STATUTE OF FRAUDS — PART PERFORMANCE — PAROL PARTITION OF LAND. — In an action of ejectment, the defendant offered to show that one of his predecessors in title had been in adverse possession of the land, under a parol partition between tenants in common, for more than the statutory period of limitation. *Held*, that the evidence should have been admitted. *Oliver v. Williams*, 50 So. 937 (Ala.).

A parol partition between tenants in common executed in severalty with livery was good at common law. See Co. Lit. 169 *a*. Jurisdictions differ as to whether a parol partition is within the Statute of Frauds. Most statutes expressly cover such a transaction. *Porter v. Perkins*, 5 Mass. 233. *Cf. Johnson v. Wilson*, Willes, 248. *Contra, McKnight v. Bell*, 135 Pa. St. 358. Possession in severalty, however, especially if continued for some time and if improvements be made, takes the case out of the statute. One ground for this result is that part performance gives an equitable title in severalty, as in the case of a contract for the sale of land. *Welchel v. Thompson*, 39 Ga. 559. Another basis of the rule is that the parties to the partition are estopped to attack it. *Berry v. Seawall*, 65 Fed. 742. *Cf. Le Bourgeoise v. Blank*, 8 Mo. App. 434. And for this reason one jurisdiction which repudiates the doctrine of part performance as applied to sales of land upholds a parol partition. *Pipes v. Buckner*, 51 Miss. 848. Moreover, the partition may be confirmed by decree of equity. *Hazen v. Barnett*, 50 Mo. 506. Or possession for the period of the Statute of Limitations may give legal title. *John v. Sabattis*, 69 Me. 473; *Slone v. Grider*, 19 Ky. L. Rep. 1698. And since in the principal case there was adverse possession in severalty for the statutory period, the decision is clearly correct.

STATUTE OF FRAUDS — SALES OF GOODS, WARES, AND MERCHANDISE — CONTRACT FOR GOODS TO BE MANUFACTURED. — An action was brought on an oral contract for the manufacture and delivery of a quantity of oil cases. *Held*, that a contract for the sale of goods already existing, or such as the vendor ordinarily produces for the general market, whether on hand at the time or not, is within the Statute of Frauds; but if the goods are to be manufactured upon a special order, the contract is not one for the sale of goods. *Courtney v. Bridal Veil Box Factory*, 105 Pac. 896 (Ore.).

There are three conflicting rules, defining a contract for the sale of goods as distinguished from a contract for work and labor. The English rule is that if the contract will result in a sale of goods, either presently existing or to be manufactured, the statute applies. *Lee v. Griffin*, 1 B. & S. 272; *Isaacs v. Hardy*, 1 Cab. & E. 287. But *cf. Clay v. Yates*, 1 H. & N. 73. In this country, what is commonly called the New York rule is that when the goods are to be manufactured the statute does not apply. *Crookshank v. Burrell*, 18 Johns. (N. Y.) 58; *Winship & Co. v. Buzzard*, 9 Rich. Law (S. C.) 103. *Cf. Bagby v. Walker*, 78 Md. 239; *Cooke v. Millard*, 65 N. Y. 352, 361. The Massachusetts rule, followed in the principal case, and embodied in the Uniform Sales Act, avoids both extremes. *Mixer v. Howarth*, 21 Pick. (Mass.) 205; *Finney v. Apgar*, 31 N. J. L. 266. See WILLISTON, SALES, § 52. *Cf. Garbutt v. Watson*, 5 B. & Ald. 613. Since the statute applies equally to executed and executory contracts, the mere fact that the goods are not yet in existence, or that labor must be expended on them, should not affect its applicability. The English rule, distinguishing between a contract essentially for a chattel and one essentially for labor, is to be preferred on principle. But the Massachusetts rule, laying down a working criterion by which the essence of the contract is to be determined, has practical advantages. But see *Pitkin v. Noyes*, 48 N. H. 294, 302.